IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1555 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

IMRANHUSSAIN SAFRUDDIN LUHAR

Versus

SUB DIVISIONAL MAGISTRATE

Appearance:

MR NM KAPADIA for the Petitioner.

Mr. I.M.Pandya, ASSTT. GOVERNMENT PLEADER for the Respondents.

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 22/10/2001

ORAL JUDGEMENT

This petition has been filed for quashing

the order dated 18th May, 2000 passed by the Sub-divisional Magistrate, Himmatnagar whereby the application of the petitioner for starting a hotel has been rejected on the ground that the permission was granted for industrial purpose, and more specifically for manufacturing pipes to the original owner of the land in the year 1974. The petitioner has purchased the lan and he wants to start a hotel business without obtaining permission for change of user and so the application of the petitioner was rejected by the Sub-divisional Magistrate, Himmatnagar. Thereafter, the petitioner filed an appeal before District Magistrate, Sabarkantha at Himmatnagar and that appeal has also been dismised vide order dated 22nd December, 2000.

2. Heard the learned counsel for the parties and perused the relevant papers on record. The contention of the learned counsel for the petitioner is that NA permission was granted for the industrial purpose and running a hotel business is also included in the definition of "industrial purpose". The Gram Panchayat has no objection if a hotel is run in the said house and the Chief District Health Officer has also no objection from the health point of view as disclosed vide letters dated 9.2.2000 and 19.2.2000 respectively. It is also stated that the petitioner applied for running a hotel and the provisional certificate has been issued by the Manager (RM), District Industries Centre, Himmatnagar.

3. On the other hand, the learned Assistant Government Pleader pointed out that the authorities have taken into account the fact that the hotel is being used for gambling purpose and several complaints were also received in that respect. But from the order passed by the Sub-divisional Magistrate, it does not appear that he has taken into account any complaint to the effect that the hotel or the house is being run for gambling purpose. Moreover, in that connection, the petitioner has not been given an opportunity of hearing and without considering that aspect, the application ofthe petitioner has been rejected. It is also submitted by the learned counsel for the petitioner that in case the matter is remanded to the Sub-divisional Magistrate, Himmatnagar, the petitioner would be able to satisfy the authority concerned that he is having a valid licence for running a hotel and change is not necessary in view of the fact that running of a hotel is also included in the definition of "industry". Secondly, the petitioner would also have an opportunity of hearing as the order dated 18.5.2000 has been passed without giving an opportunity of hearing to the petitioner. The learned Assistant

Government Pleader is in agreement that the matter be remanded to the Sub-divisional Magistrate, Himmatnagar so that the petitioner would be able to contend regarding his grievances in respect of non-use as well as complaints made against him.

3. In view of the above discussion, this petition deserves tobe allowed and is hereby accordingly allowed. The impugned orders dated 20.12.2000 passed by the respondent no. 2 and dated 18.5.1999 passed by the respondent no.1 are hereby quashed and set aside. The matter is remanded to the Sub-divisional Magistrate, Himmatnagar. The petitioner is directed to appear before the Sub-divisional Magistrate. The Sub-divisional Magistrate, Himmatnagar is directed to decide the matter afresh, in accordance with law, after giving a reasonable opportunity of hearing to the petitioner, preferably within a period of one month from the date of receipt of the certified copy of this judgment. Rule is made absolute accordingly with no order as to costs.

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